P-427, 3075, 3081, 421/C-92-9; P-3075/NA-91-898 ORDER DENYING REQUEST FOR RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Complaint of Bridge Water Telephone Company Concerning the Bypass by Sherburne County Local Telephone Company, Sherburne Long Distance, Inc., Sherburne Fibercom, Inc., Northern States Power Company, and US WEST Communications, Inc.	ISSUE DATE: May 11, 1993 DOCKET NO. P-427, 3075, 3081, 421/C-92-9
In the Matter of the Request of Sherburne Long Distance Company for a Certificate of Authority to Provide Interexchange Telephone Service Within the State of Minnesota	DOCKET NO. P-3075/NA-91-898 ORDER DENYING REQUEST FOR RECONSIDERATION

PROCEDURAL HISTORY

On November 15, 1991, Sherburne Long Distance, Inc. (SLD) filed an application for a certificate of authority to provide telecommunications service in Minnesota. On January 28, 1992, SLD withdrew the tariff it had originally proposed and substituted a proposed Self Healing Network Service (SHNS) tariff.

On January 3, 1992, Bridge Water Telephone Company (Bridge Water) filed a complaint protesting SLD's proposed implementation of the SHNS tariff. The complaint named the following respondents: Sherburne County Rural Telephone Company (SCRTC); SLD; Sherburne Fibercom, Inc. (SFI); Northern States Power Company (NSP); and US WEST Communications, Inc. (US WEST). SCRTC, SLD and SFI (together, the Sherburne Group or Sherburne) are affiliates which are wholly owned subsidiaries of Sherburne Tele Systems, Inc.. NSP is a Minnesota public utility which owns and operates electrical generating plants in the Monticello local exchange and the Becker local exchange. Bridge Water serves the Monticello exchange. US WEST is a Minnesota telephone company which serves parts of the Twin Cities metropolitan area, including a SHNS ring which interconnects various NSP facilities in the metro area.

The Sherburne Group had entered into a contract with NSP to provide part of a linkup which would include the Monticello and Becker NSP facilities in the SHNS ring.

On October 16, 1992, the Commission issued its ORDER GRANTING MOTION TO INTERVENE, CONSOLIDATING DOCKET, PARTIALLY DISMISSING COMPLAINT, GRANTING CERTIFICATE OF AUTHORITY, AND REQUIRING FURTHER FILINGS. Among other things, this Order consolidated the Bridge Water complaint proceeding with the SLD certification docket.

On October 27, 1992, the Sherburne Group filed a petition for partial reconsideration of the Commission's October 16, 1992 Order.

Bridge Water filed a response to the Sherburne Group's petition on November 4, 1992. Responses were filed by US WEST and NSP on November 5, 1992.

The matter came before the Commission on April 6, 1993.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

A. The Sherburne Group

Sherburne requested reconsideration of the following portions of the Commission's October 16, 1992 Order:

1. The finding that SHNS as proposed involves the offering of local telephone service;

2. The finding that SLD must apply for a territorial certificate under Minn. Stat. § 237.16, subd. 1 to provide SHNS to NSP;

3. The portion of Ordering Paragraph No.5 which prohibits SLD from carrying traffic from NSP customer premises at the Becker or Monticello generating plants to the interexchange SHNS network;

4. Ordering Paragraphs Nos. 6, 7 and 9, which require SCRTC and Bridge Water to be providers of "local links" to SHNS.

Sherburne quoted the Minnesota Administrative Procedure Act (APA), which defines a rule as "every agency statement of general applicability and future effect...adopted to implement or make specific the law enforced or administered by it..." Minn. Stat.

§ 14.02, subd. 4 (1992). According to Sherburne, the Commission's creation of a local link concept constituted an unpromulgated rule: the decision conformed to the definition of a rule, but the Commission did not follow APA rule making procedure.

Sherburne also argued that a case relied upon in the Commission's Order, Metro Fiber[1], was not authority for requiring SLD to obtain territorial certification for its service. According to Sherburne, Metro Fiber applies only to intraexchange special access, while in this case SLD wishes to provide interexchange private line services.

Sherburne next argued that the Commission's findings regarding the local link concept are preempted by the decisions of the Federal Communications Commission (FCC), and are at odds with federal law.

Sherburne also declared that there is no substantial evidence in the record to support the finding of a local link component of SHNS. Sherburne denied that there would be any access line or communications transport between the Becker and Monticello plants and the SHNS ring. Sherburne argued that there is no evidence that the SHNS ring would be used by the Becker or Monticello plants to transport communications traffic to the outside world.

Sherburne protested that its procedural due process rights were violated because it was surprised at the original hearing by the Commission's insistence upon territorial certification. In the reconsideration hearing, Sherburne argued that the Commission's local link concept was applied inconsistently to various interexchange carriers (IXCs).

Finally, Sherburne argued that the Commission's decision to require territorial certification for SLD was contrary to public policy. According to Sherburne, this decision was an expansion of the traditional scope of the local exchange monopoly. This expansion is at odds with decisions by many state commissions and the FCC, which favor reducing the scope of the local monopoly.

B. US WEST

US WEST disagreed with Sherburne's assertion that the Commission's decisions in the October 16, 1992 Order constituted improper rule making. US WEST argued, however, that the Commission departed from it past precedent in these decisions,

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[1] In the Matter of the Filing by Metro Fiber Systems to Provide Certain Telecommunications Services Within Minneapolis and Saint Paul, Minnesota, Docket No. P-495/EM-89-80, ORDER GRANTING CERTIFICATE OF AUTHORITY (June 16, 1989).

without articulating its reasoning. According to US WEST, the Commission has previously allowed bypass of the local exchange company by customers seeking connection to IXCs.

US WEST seconded Sherburne's argument that the Commission's decision regarding the local link is preempted by federal law.

C. Bridge Water

Bridge Water argued that the Commission's decision did not constitute improper rule making. According to Bridge Water, the Commission was simply applying the existing laws and rules to the facts of this case.

Bridge Water urged the Commission to deny Sherburne's due process claim. Bridge Water argued that Sherburne was not surprised by the local link concept at the original hearing. On the contrary, Bridge Water stated, this matter was fully dealt with in its pre-hearing briefs. According to Bridge Water, the local link concept is not a new policy, but the logical application of existing laws and rules.

Bridge Water denied that the Commission has been preempted by the FCC in this matter. This decision pertains to intrastate service and is clearly within Commission jurisdiction.

Finally, Bridge Water countered Sherburne's argument that there is no communications transport between Monticello or Becker and the SHNS ring. Bridge Water pointed to the parties' Stipulation of Facts to support its claim that communications transport exists.

D. NSP

NSP specifically declined to take any position on the legal issues before the Commission. NSP urged the Commission to move to a speedy resolution of the issues, so that NSP may implement the SHNS ring as quickly as possible.

II. Commission Analysis

The Commission finds that the parties have not presented any arguments which would justify reconsideration of the October 16, 1992 Order. The main arguments of the parties will be analyzed in turn.

A. Procedural Validity of the Commission's Decision

Sherburne stated that the Commission's decision regarding the local link was an improper rule making. US WEST argued that the Commission had departed from past precedent without articulating

reasons. The Commission finds that its prior decision was a proper application of rule and precedent.

1. The Commission's Application of Its Rule

In the October 16, 1992 Order, the Commission agreed with Bridge Water's local link concept, which states that the local exchange provider must transport the SHNS communications over that part of the ring between the interexchange meet point and the customer premises which lies within the local service territory. In arriving at this finding, the Commission applied the definition of local exchange service found in Minn. Rules, part 7810.0100, subp. 23:

> "Local exchange service" means telecommunication service provided within local exchange service areas in accordance with the tariffs. It includes the use of exchange facilities required to establish connections between stations within the exchange and between stations and the toll facilities serving the exchange.

Rather than promulgating a new rule without the proper procedure, the Commission relied upon an established rule in its analysis of the factual case at hand. Interpretation and application of Commission rules are well within the scope of quasi-judicial powers vested in the Commission pursuant to Minn. Stat. § 216A.05 and § 216A.02:

> The functions of the Commission shall be legislative and quasijudicial in nature.
>
> Minn. Stat. § 216A.05, subd. 1
>
> "Quasi-judicial function" means the promulgation of all orders and directives of particular applicability governing the conduct of the regulated persons or businesses, together with procedures inherently judicial.
>
> Minn. Stat. § 216A.02, subd. 4

Minnesota courts have consistently found that a commission may interpret a rule or statute without engaging in illegal rule making, as long as the interpretation is consistent with the rule's or statute's plain meaning. See, G. Beck, L. Bakken and T. Muck, Minnesota Administrative Procedure, § 16.5.2 (1987).

The Commission's application of the definition of local exchange service was consistent with the plain meaning of Minn. Rules, part 7810.0100, subp. 23. The Commission's interpretation of its rule was within its powers and did not constitute improper rule making.

2. The Commission's Adherence to Precedent

The Commission also adhered to its own precedent, including the holdings of Metro Fiber, in which the Commission stated:

> MFS is proposing to offer non-switched intrastate private lines from the customer to the points of presence of interexchange carriers and private lines among and between the points of presence of interexchange carriers. The Commission finds that these are special access services, local services. MFS plans to construct facilities that will furnish local services in an area where Northwestern Bell is already providing such services; the Commission concludes that a certificate of authority is necessary.
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> Metro Fiber at p. 4.

The Commission sees little merit to Sherburne's argument that Metro Fiber must be distinguished because it deals with intraexchange special access, while the case at hand concerns interexchange private line service. The Commission has previously found that special access and private line are simply two names for the **same** technological capability. In recent tariffs, both concepts are usually subsumed under the name "private line transport," because one private entity has dedicated use of capacity on the facility. Parties often call a private line transport facility either "special access" or "private line" when referring to a particular function within the private line transport concept. In actuality, special access and private line are interchangeable.

The Commission made this finding in its January 4, 1989 ORDER MODIFYING OFFER OF SETTLEMENT AND ADOPTING OFFER OF SETTLEMENT AS MODIFIED[2]. In that Order, the Commission found that Northwestern Bell's proposed tariff substantially achieved the Commission's previous directive to file a combined special access and private line tariff. The Commission had stated that a combined tariff would be "an appropriate means of eliminating the competitive unfairness inherent in the current private line and special access rates." Competitive unfairness was inherent because different prices had previously been set for private line and special access, **although they were essentially the same thing**. Combining special access and private line into the "Private Line Transport Services" tariff eliminated issues of unfair pricing. Northwestern Bell, now known as US WEST, still offers its private line and special access services under the Private Line Transport

[2] In the Matter of Northwestern Bell Telephone Company's Private Line Transport Services Tariff Filing, Docket No. P-421/M-87-596.

Services tariff.

Thus, Metro Fiber was appropriately relied upon to support the Commission's findings regarding the local link concept. The Commission did not depart from precedent set in its prior opinion.

Contrary to the arguments of US WEST and Sherburne, the Commission's treatment of the local link issue is also consistent with Commission treatment of this concept in other tariffs.

The Commission-approved Minnesota Independent Access Tariff, upon which both SCRTC's and SLD's tariffs are based, requires that the local link between a customer's premises and the interexchange carrier be served by the local exchange company:

> Each Telephone Company will provide its portion of the Access Service within its operating territory to an interconnection point(s) (IP) with the other telephone company.
>
> Paragraph 5.2.1 (A) (2)
>
> For Special Access Service involving a hub(s) the customer must place the order with the telephone company in whose territory the hub(s) is located.
>
> Paragraph 5.2.1 (A) (2) (e)

At the April 6, 1993 hearing, Sherburne stated that the local link concept is absent from two private transport tariffs approved by the Commission, AT&T's Accunet tariff and MCI's Dedicated Leased Line Service. According to Sherburne, the Commission had therefore treated Sherburne's proposed tariff in a manner inconsistent with the Commission's treatment of the two comparable tariffs. The Commission disagrees with Sherburne's assertion.

Each of the two cited tariffs provides for private transport loops for high-speed data and voice transmission; the services are therefore analogous to SHNS. Within the tariffs for these services, each company alludes to a local exchange component.

In MCI's Dedicated Leased Line Service tariff, the local exchange concept is included under Terrestrial Digital Service TDS-1.5, MCI's name for a "SHNS-like" private transport configuration. At Section C, SERVICE DESCRIPTIONS AND RATES, the tariff states:

> Terrestrial Digital Service TDS-1.5
> T-1 Digital Access is a high capacity local access arrangement which relies on T-1 transmission technology provided by the Local Exchange Carrier and which will be used to connect customer's premises to MCI terminals to provide customer access to MCI Services. This form of access is available in conjunction with the following

service offerings: ..... Terrestrial Digital Service (TDS-1.5).....

Paragraph 2.0212

Local Access Channel
Monthly and installation charges for each Local Access Channel will be calculated on an individual case basis, in accordance with the charges set forth in the relevant Local Exchange Carrier's tariff or in accordance with the rates of other access providers. The total of the local charges imposed on MCI will be passed on to the customer.

Paragraph 2.02121

The MCI Dedicated Leased Line Service tariff thus provides for a local link concept, known as the Local Access Channel, within the private transport facility. MCI coordinates the charges imposed by the local exchange carriers (LECs), combines them with MCI's rates, and passes them on to the customer.

The other tariff cited by Sherburne, AT&T's Accunet, also contains a local link concept within its private transport language. AT&T's offering which is analogous to SHNS is known as Accunet Channel Digital Service. This service has two components:

1. An Interoffice Section, provided by AT&T, which connects one LEC central office to another LEC central office along the private transport loop;

2. A Local Distribution Section, provided by LECs within their exchanges, which connects the customer's premises to the LEC central office, where the interconnection with the private transport loop takes place.

See, AT&T Channel Digital Service Tariff, REGULATIONS Paragraph 1.7, Method of Applying Rates, Subparagraph 1.7.2, also REGULATIONS Paragraph 1.5, Definitions, "Interoffice Section" and "Local Distribution Section."

The Local Distribution concept under the AT&T Accunet Channel Digital Service tariff is thus analogous to MCI's Local Access Channel. Both concepts are consistent with the local link concept required for the Sherburne SHNS tariff.

The Commission therefore finds that its treatment of the local link/special access/private line concept in this case is consistent with its treatment of this issue in prior Orders and in current tariffs.

B. The Federal Preemption Question

Both Sherburne and US WEST argued that the Commission's decision regarding the local link was in conflict with and preempted by

federal law. The Commission finds that a decision in this set of facts is within its jurisdiction and is not in conflict with or preempted by federal law.

1. Interstate/Intrastate Jurisdictional Concepts

The regulation of intrastate telecommunications facilities was specifically reserved for state regulatory agencies under the Communications Act of 1934:

> ...nothing in this chapter shall be construed to apply or to give the [Federal Communications] Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier...
>
> 47 U.S.C. § 152 (b)

As planned by US WEST and SLD, the SHNS ring would serve and connect NSP facilities within the state of Minnesota. Regulation of the SHNS facility thus falls within the Commission's intrastate jurisdiction, as established by the Communications Act of 1934.

Sherburne, however, argued:

> [w]hile the Order in this case involves only an intrastate interexchange private line, it will unavoidably interfere with the FCC's interstate jurisdiction when applied to private lines carrying interstate traffic. In the latter scenario it is without question that the Minnesota Commission's new redefinition of local exchange service will be preempted by the FCC.

The Commission finds that Sherburne's argument is in conflict with telecommunications case law on the preemption issue. Rather than stretching intrastate questions to reach a finding of federal preemption, federal courts have consistently limited federal jurisdiction to instances in which the assertion of intrastate jurisdiction would block or hinder important federal policies.

In National Association of Regulatory Utility Commissioners v. Federal Communications Commission, 880 F.2d 422, 429 (1989), the court stated:

> In sum, the **only** limit that the Supreme Court has recognized on a state's authority over intrastate telephone service occurs when the state's authority over that authority negates the exercise by the FCC of its own lawful authority over interstate communication. Thus, the FCC may not use its preemptive powers in a manner that would negate the lawful exercise of state authority over intrastate service,

as Louisiana PSC illustrates.

In Public Service Commission of Maryland v. FCC, 900 F.2d 1510, 1515 (D.C. Cir. 1990), the court stated:

> FCC preemption of state regulation is thus permissible when (1) the matter to be regulated has both interstate and intrastate aspects [cite omitted]; (2) FCC preemption is necessary to protect a valid federal regulatory objective [cite omitted]; and (3) state regulation would "negate the exercise by the FCC of its own lawful authority" because regulation of the interstate aspects of the matter cannot be "unbundled" from regulation of the intrastate aspects [cite omitted].

In the case of the SHNS proposal, the Commission's decision that the LEC must serve the local link within its territory is a proper exercise of the Commission's jurisdiction over this intrastate matter. The FCC has made no assertion of preemption over state regulation of this type of intrastate facility. The exercise of state regulatory authority over this issue will not risk any "valid federal regulatory objective" or "negate the exercise by the FCC of its own lawful authority." The requirement that the local telephone company must interconnect the end user with the IXC's point of presence on the ring will not in any way hinder interstate communication or the FCC's exercise of its authority over interstate service.

2. Cases Cited by Sherburne and US WEST

With the statutory framework of Commission intrastate jurisdiction and the limits on federal jurisdiction in mind, the Commission will examine the cases cited by Sherburne and US WEST in their arguments for federal preemption.

Sherburne cites two cases to bolster its theory that decisions on the intrastate SHNS ring must be preempted because SHNS is the same type of private line facility as is used in interstate service. Sherburne cited National Association of Regulatory Utilities Commissioners v. Federal Communications Commission, (NARUC), 737 F.2d 1095 (D.C. Cir. 1984), in which the court affirmed the FCC's authority to impose flat-rate end user access charges to support the costs of the interstate network. Sherburne also cited Atlantic Richfield Company, 3 FCC Rd. 3089 (1988) (ARCO). In ARCO, the FCC preempted the Texas Public Utilities Commission, which had prohibited a Texas LEC from providing additional interconnections to the public switched network within another LEC's territory.

Both NARUC and ARCO are distinguishable from the SHNS case. Both cases cited by Sherburne involve classic, inarguable FCC jurisdiction over the **interstate** network. In NARUC the FCC properly asserted its authority to collect the costs of constructing and maintaining the interstate network from end

users who are connected to the network. In ARCO the FCC prohibited a LEC's actions which would have blocked or hampered access to the interstate network.

The SHNS case before the Minnesota Public Utilities Commission involves an intrastate facility, not the interstate network. Although the same type of physical facility could be used for interstate service, it is simply not the case here. The SHNS service is intrastate in its entirety, does not constitute a hindrance to interstate service, and is not one of the basic costs of interstate service. The SHNS situation is not governed by NARUC or ARCO; SHNS is clearly within Commission jurisdiction.

Further, in upholding the ARCO decision, the federal court in Public Utilities Commission of Texas v. F.C.C., 886 F.2d 1325, 1335 (D.C. Cir. 1989) again stated a policy of maintaining state jurisdiction over intrastate matters unless such jurisdiction directly interferes with valid interstate functions. The FCC only prevailed in this case, the court stated, because

> ...the F.C.C. established - on the record developed before it - the impossibility of ensuring ARCO's freedom of access to the interstate network without preempting the extraordinarily broad Texas PUC's order.

Sherburne also cites a case to support a determination that SLD is not engaged in the prohibited offering of local telephone service: In re Application of Teleport Communications - New York for Transfer of Control to Cox Teleport, Inc., File No. 13135-CF-TC-(3) - (92) (Sept. 4, 1992). This case concerns the federal prohibition against cross-ownership by telephone companies and cable companies. It is factually distinct from the SHNS question before the Commission; an attempt to apply its definition of "local exchange service area" to the case at hand is unhelpful.

US WEST offers the two NARUC cases cited above for an argument regarding the FCC view of jurisdictional issues. According to US WEST, the FCC "views the federal jurisdiction as extending from the beginning to the end of all interstate traffic, including the customer-premise equipment on each end of the calls." US WEST argues that the Commission's decision regarding the local link is therefore preempted by the FCC.

The Commission agrees that the NARUC cases, and other federal case law, and the Communications Act of 1934, place interstate jurisdiction with the FCC. The SHNS ring, however, is not an interstate configuration; it is intrastate. The fact that the same physical facility could be used to interconnect with the interstate network does not take the SHNS ring out of intrastate jurisdiction.

> In NARUC, we rejected the FCC's contention that whenever facilities are physically inseparable into intrastate and interstate components the [Federal Communications] Commission is empowered to pre-empt state regulation of

those facilities.

Public Utilities Commission of Texas v. F.C.C., 886 F.2d 1325, 1332 (D.C. Cir. 1989)

Only when the assertion of intrastate jurisdiction blocks important federal policy or functions would the FCC preempt state regulation; this is not the case in the set of facts before the Commission, and the FCC has not asserted any preemptive rights.

US WEST next argues that a new determination of interstate/intrastate jurisdiction has been established in an FCC decision, MTS and WATS Market Structure and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, 4 FCC Rcd. 5660 P.2, 5661 P.P. 8, 9 (1989). In that case, the FCC approved a method of allocating the costs of mixed use special access lines between the intrastate and interstate jurisdiction. Under the decision, the costs of a mixed use line would be directly assigned to the interstate jurisdiction if the proportion of interstate traffic carried by the line was higher than 10%.

The decision adopted by the FCC in the MTS and WATS case is described by the FCC as a method of "dividing costs between the jurisdictions" and a process for "the separation of investment in mixed use special access line." The Commission finds that this decision, which addresses cost allocation methods, should not be construed as a new assertion of FCC jurisdiction over intrastate regulation. Such a conclusion would be contrary to the jurisdictional tenets of the Communications Act of 1934 and controlling case law.

The Commission has carefully examined the cases cited by Sherburne and US WEST in support of their federal preemption argument. The Commission finds that none of the cases supports the assertion of federal jurisdiction over the Commission's decision.

C. Evidence of a Local Link Component of SHNS

Sherburne argued that there is no substantial evidence of a "communications transport" between the customer's premises and the SHNS system. Sherburne urged the Commission to view the SHNS ring as a "continuous circle" running through various NSP plants and connecting them with NSP headquarters, without any "access" or "communications transport" involved. According to Sherburne's view, Bridge Water would provide the only special access, transporting NSP's non-company telecommunications through the Monticello central office and to the outside world.

US WEST asserted that an IXC may locate its point of presence anywhere it chooses, including the end user's facility (here, the NSP Monticello plant). Under this scenario, there would be no local link between the end user and the IXC's point of presence on the SHNS ring.

The Commission finds that Sherburne's and US WEST's new conceptualizations of a system such as SHNS is contrary to precedent, logic, and public policy.

As previously discussed in this Order, the Minnesota Independent Access Tariff, approved by the Commission and relied upon by Sherburne in its tariffs, clearly states that local exchange companies are involved in the provision of access.

Logic and sound public policy support the concept of a SHNS ring as established in the Minnesota Independent Access Tariff. If a SHNS ring were envisioned to flow seamlessly through various exchanges, serving end users without local exchange company involvement, the concept of territorial authority would be undermined or destroyed. Under this reasoning, nothing would stop an interexchange company from reaching into any exchange to transport any end user's telecommunications along a SHNS type ring. This is contrary to the consistently articulated public policy underlying the concept of territorial integrity.

Minn. Stat. § 237.16, subd. 1 requires Minnesota telephone companies to maintain the integrity of territorial authority. Denying the existence of a local link within the LEC's territory would clearly contradict this statute.

The Commission is not swayed by NSP's offer to split its communications out of the Monticello plant, sending company data along the SHNS ring and sending non-company telecommunications through Bridge Water facilities to the outside world. While the Commission does not doubt the sincerity of NSP's offer, there is no demonstrated system of monitoring the split in communications. Such a system would be open to inadvertent misuse, or abuse by future parties following NSP's lead.

Even if this two-part communications system could be monitored, the Commission believes that such a system is contrary to public policy. As the Commission stated in its October 16, 1992 Order:

> The Commission finds that this functionalization of the local link is not justified by precedent or logic. The local link from the end user is the "window" for the end user to connect with the host of services provided by the SHNS system. Through the local link, the end user is technologically connected with local, interexchange, and data communications capabilities. If the local exchange company were deprived of the right to provide this link, the territorial authority concept would be severely weakened. Local exchange companies could be left with monopoly rights and duties to provide sometimes farflung and marginally profitable subscribers with traditional local service, while faced with tough competition for linkage with new and highly marketable telecommunications service.
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> Order at p. 11.

The Commission therefore finds that there is ample evidence of a local link communications transport component of a SHNS ring, and that the local link concept is fully supported by statute and by sound public policy.

D. The Commission's Treatment of Sherburne During This Proceeding

Sherburne charged that the Commission had violated its due process rights during the initial hearing on this matter. Sherburne asserted that at the hearing the Commission "imposed the requirement of a local certificate without giving SLD any prior notice of this new procedure." At the hearing upon reconsideration, Sherburne expanded this argument. Sherburne now argued that the Commission not only failed to afford Sherburne its due process rights, but treated Sherburne in a discriminatory fashion, contrary to the Commission's treatment of other similarly situated companies.

The Commission finds that it has acted fairly, in a nondiscriminatory fashion, and in accordance with Sherburne's due process rights.

There was no surprise element to the Commission's requirement of a territorial certificate for the provision of local link service. As discussed previously, this concept is clear under Minn. Stat. § 237.16, subd. 1, Minn. Rules, part 7810.0100, subp. 23, in Commission-approved tariffs and in prior Commission opinions. The matter was also thoroughly argued in Bridge Water's briefs which were filed months prior to the initial proceeding[3]. Sherburne's claim of a violation of its due process rights is without merit.

The Commission is equally unpersuaded by Sherburne's claim of discriminatory treatment at the hands of the Commission. The statute, rules, tariffs and opinions cited in this Order show that the local link concept has been fully articulated and that the Commission has consistently applied the concept.

III. Certificate Granted to SLD in the October 16, 1992 Order

In the October 16, 1992 Order, the Commission stated at Order Paragraph 5:

> SLD is granted a general certificate of authority to provide intraexchange and interexchange telecommunications service in Minnesota. SLD shall not carry traffic from NSP customer premises at the Becker or Monticello generating plants to the interexchange SHNS network.

The words "intraexchange and" in the first sentence of the above paragraph were inconsistent with the second sentence of the

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[3] See, Reply Comments of Bridge Water Telephone Company, Docket No. P-427, 3075, 3081, 421/C-92-9 (April 17, 1992), and Reply Comments of Bridge Water Telephone Company on the Whitehead and Callaway Issues, Docket No. P-427, 3075, 3081, 421/C-92-9 (May 22, 1992).

paragraph, and with the findings of the Order. The Commission stated in the last paragraph of the body of the Order, at p. 12:

> The Commission will grant SLD a general certificate to provide long distance service in Minnesota, in this case specifically the implementation of the SHNS tariff. As long as SLD does not encroach upon the local link between NSP's Becker and Monticello facilities and the SHNS system, and otherwise complies with governing statutes and rules, SLD will be free to offer long distance services, pursuant to tariffs filed by SLD and approved by the Commission.

Thus, the inclusion of the words "intraexchange and" in Order Paragraph 5 was clearly inadvertent. The Commission will clarify the October 16, 1992 Order, so that Order Paragraph 5 will read:

> SLD is granted a general certificate of authority to provide interexchange telecommunications service in Minnesota. SLD shall not carry traffic from NSP customer premises at the Becker or Monticello generating plants to the interexchange SHNS network.

The October 16, 1992 Order remains unchanged in every other respect.

ORDER

1. Sherburne's request for partial reconsideration is denied.

2. Order Paragraph 5 of the Commission's October 16, 1992 Order in this proceeding is clarified to read:

   SLD is granted a general certificate of authority to provide interexchange telecommunications service in Minnesota. SLD shall not carry traffic from NSP customer premises at the Becker or Monticello generating plants to the interexchange SHNS network.

3. Within 30 days of the date of this Order, the parties shall notify the Commission in writing of the inclusion of the Monticello and Becker NSP plants in the SHNS ring.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)